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FEDERAL MARITIME COMM

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BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 13-05

AMENDMENTS TO REGULATIONS GOVERNING OCEAN TRANSPORTATION INTERMEDIARY LICENSING AND FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES

COMMENTS OF RAFFAELE NATALE

I am Raffaele Natale of American Intl Cargo Service Inc.

We are an OTI with a Corporate office in Moonachie, New Jersey, and branch offices in Bensenville Illinois, and Long Beach California, covered under license # 13862N

We are familiar with the issues raised by the ANPRM and, understand that it will not only affect those involved in the so called, "barrel trade", but the entire industry. Therefore we are concerned with the following proposals that we feel may be burdensome to our industry.

License Renewal

The FMC's proposal to require all forwarders and NVOCCs to renew licenses every two years by filing an application and paying a fee is unnecessary because all OTIs are already required to keep the Commission informed of any changes in their corporate structure, officers and directors, and locations of their headquarters and branch offices. If the Commission is concerned that some OTIs are not complying with this obligation, a simpler proposal would be to require all OTIs to file an annual certification, without requiring a formal application. Requiring applications necessarily means that someone at the agency will be required to review and approve them, but the Commission has neither the staff nor budget to handle the added burden of doing this every two years for all OTIs. There is no reason to have to pay any filing or user fee for this, as we are not seeking any benefit or new license from the Commission.

Requiring recent certificates of good standing to be filed as part of this application renewal process is costly and burdensome, and is unnecessary since the Commission can quickly obtain proof of a company's good standing when and if that issue becomes relevant.

In view of the information Commission staff often seeks during the process of reviewing a license application, there is reason for concern that the renewal process will take up a great deal of time looking for information that has little or no relevance to the company's performance.

It is unclear whether any problems the FMC might have with a QI at the time of license renewal would also jeopardize the license of the company; for example, would a company's license be jeopardized because its QI is engaged in litigation over some alleged debt?

We do however agree that when applying for a license, a QI should have experience in the industry. The minimum time should be somewhere in between 3-5 years to make sure the individual has good knowledge of the industry and maintains compliance with the laws.

Bonding

There would be an increase in the cost of business for small OTIs, which just increases cost without providing any benefit in the services that are being provided. It is not clear why OTIs are being singled out for these increased bonds; if VOCCs go bankrupt or experience mishaps where a vessel sinks or it is necessary to declare general average, the shippers are hurt far worse, so why is the FMC focusing on OTIs?

Most commercial shippers are insured against cargo loss and damage. If we had a legitimate claim from a shipper, we would pay it, so that there is no reason for anyone to proceed against our bond; indeed, no one ever has. If the real problem that the Commission is facing deals with the transportation of household goods for non-commercial shippers, there is no reason to increase the bonds for mainstream OTIs that do not handle such items. Currently, there is no indication in the ANPRM that any claim has been made against a licensed forwarder's bond, so that there is no rationale for increasing forwarder bonds.

Of greater concern is the proposal to amend Section 515.23 to introduce a multi-tiered priority system for claims against OTI bonds, along with a complex notification system and payment system. In the event the Commission would go forward with the priority system, this could significantly change the way ocean cargo moves , as the VOCC's would be tempted to put all OTI's on a cash basis and/or assert liens to prevent cargo from being released. This would disrupt the flow of international shipments, since import cargo moving on a collect basis could not be cleared and moved to destination until the consignee pays all applicable freight up front. Given the few number of instances in which sureties have had to pay off of an OTI's bond, the Commission needs to carefully consider the unintended consequences that could result from a proposal of this nature.

Another serious issue with the proposed changes to Section 515.23 relates to the proposal to require parties to report claims to the FMC, so that the Commission can then publish a list of those actions and claims on its website "for information purposes only." Does this mean that any claims or court actions involving an OTI need to be reported, even including loss and damage claims, demurrage and detention claims? This needs to be clarified.

We also question the propriety of having the Commission publish a list of claims against an OTI, even with a disclaimer that the agency is not commenting upon the merits or the validity of those claims. Just having a list published on the Commissions website will result in the publication of sensitive, commercial data that would likely be detrimental to the OTI in question. The unintended consequences that these changes might cause would likely be far more significant than any concerns about the need to prorate bond recoveries in the rare instances that an OTI goes out of business with significant pending transportation related claims.

Agency Issues

While we recognize and agree with the Commission to implement a number of recommendations from the FF 27 Report pertaining to advertising and agents in the household goods industry, there is no need for the Commission to carry those recommendations forward into the mainstream commercial OTI industry. All of the problems and issues identified in the FF 27 report pertain exclusively to the movement of individual household goods and personal effects. We therefore believe that the regulations should be considered only for this traffic, and we are not aware of any reason for the proposed regulations concerning agency and advertising in proposed Section 515.31 to be made applicable to the movement of mainstream commercial cargo.

We also believe that having a special license category of, for example, "used household goods and personal effects, not for sale", and would be helpful in reducing the level of complaints that may be a method worth trying. The Commission should consider proposing this alternative, subject to the understanding that licensed OTI's already handle this type of cargo, and should be "grandfathered" and not required to reapply for this new license.

SUGGESTED NEW REVISIONS

Since the Commission has sought comments concerning proposals that it has apparently been contemplating, this is a good opportunity for the trade to suggest changes that will be helpful in alleviating unnecessary regulation while not compromising the FMC's oversight responsibilities. These proposals are:

- Eliminate procedural requirements for NRA's. We believe that the requirements in 46 CFR 532.5, at least with respect to a writing from both parties, are largely unnecessary and complex. Even though it is not relevant to shippers, it is still required that there is a writing from both the OTI and shipper concerning the fact that the shipment is subject to an NRA. Yet in every other commercial relationship, a contract is formed by an offer and acceptance. In ocean shipping, an OTI's offer followed by a shippers booking and/or tendering of the cargo should accordingly suffice to form the necessary NRA contract.

- Eliminate the need for NVOCC's to file NSA's or publish their essential terms. The filing of service contract and essential terms that are required of the VOCC's is attributable largely to the fact that their agreements have antitrust immunity. Since NVOCC's do not have such immunity, and since no public benefit is derived by continued filing of NSA's, these requirements should be reviewed and then eliminate them.

- The FMC should require the vessel operators to establish and file their contingency plans for dealing with cargo during periods of anticipated severe congestion, including the amount and timing of proposed surcharges, all of which information could be posted on the Commissions website. This would be beneficial to shippers and OTI's alike, as the trade could then be advised of those plans in the event there are severe weather or other issues that could be expected to lead to significant service disruptions. A system of this nature could have alleviated a considerable amount of expense and disruption, from such major storms as Sandy.

- The Commission should work with the FMCSA to establish a common bond for OTI's and motor carrier property brokers, which would reduce the financial burden on intermediaries that are regulated by both agencies.

Other Info

Our company's total revenue for 2012 was 22 million

1. Cost of FMC bonds- $1500.00

2. Staff hours required to comply with the existing bonding requirements- 5 hours

3. Staff hours that would be required to comply with the changes relating to the increased bond, priority and claim reporting system in the proposed rule- 20
4. Increase for the amount of the bond proposed in the ANPRM- $15,000.00
5. Whether the proposal would change your type of coverage - No
6. Your estimated annual cost of compliance with the new financial responsibility requirements- 5

DATED: 8-29, 2013

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